

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HEIDI C. LANZENDORFER,

Plaintiff,

vs.

NO. 2017 – 1035

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife,  
PHILIP BARBERA, JR., and  
BARBERA'S, INC.

Defendants.

**AMENDED PETITION FOR RELIEF OF  
JUDGMENT OF DEFAULT PURSUANT  
TO PA. R.C.P. 237.3**

*Counsel of Record for Party Filing:*

Dennis J. Stofko, Esquire  
I.D. 27638  
STOFKO LAW OFFICES  
969 Eisenhower Boulevard, Suite E  
Johnstown, PA 15904  
(814) 262-0064  
(814) 262-0905 (facsimile)

FILED FOR RECORD  
2017 JUN 19 AM 10:23  
PROTHONOTARY  
CAMBRIA COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HEIDI C. LANZENDORFER,

Plaintiff,

vs.

NO. 2017 – 1035

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife,  
PHILIP BARBERA, JR., and  
BARBERA'S, INC.

Defendants.

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2017, upon review and consideration of the Amended Petition for Relief of Judgment of Default Pursuant to Pa. R.C.P. 237.3 filed on behalf of Defendants Philip Barbera, and Marilyn Barbera, husband and wife, Philip Barbera, Jr., and Barber's, Inc., is it hereby ORDERED AND DECREED that said Petition is GRANTED and Defendants shall have leave to file their Answer and New Matter as presented to this Court.

BY THE COURT.

\_\_\_\_\_. J.

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HEIDI C. LANZENDORFER,

Plaintiff,

vs.

NO. 2017 – 1035

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife,  
PHILIP BARBERA, JR., and  
BARBERA'S, INC.

Defendants.

**AMENDED PETITION FOR RELIEF OF JUDGMENT OF DEFAULT  
PURSUANT TO PA. R.C.P. 237.3**

Petitioners, Philip Barbera and Marilyn Barbera, husband and wife, Philip Barbera, Jr., and Barber's, Inc., by and through counsel, Dennis J. Stofko, Esquire hereby petition the Court pursuant to Pa. R.C.P. 237.3 for relief of judgment of default, and in support thereof aver as follows:

1. Plaintiff filed a Complaint in an appeal from a District Magistrate decision with the Prothonotary's Office of Cambria County on or about April 10, 2017. (See copy of Docket entries from Cambria County Prothonotary's Office attached hereto as Exhibit 'A'.)

2. On or about April 21, 2017, an Answer was filed by Defendant Philip Barbera.

3. The Answer was intended to include an answer on behalf of other Defendants identified as Barbera's, Inc. and Philip Barbera, Jr. and Marilyn Barbera.

4. Thereafter, on May 19, 2017, a Praecipe for Default Judgment was filed by Plaintiff against Defendants Barbera, Inc., and Defendants Marilyn Barbera and Philip Barbera.

5. Defendant Philip Barbera, Jr. thereafter filed a Motion to Strike on May 22, 2017, which was within ten (10) days of the entry of a judgment of default.

6. The within motion is an amendment to the motion to strike filed by pro se Defendant Philip Barbera, Jr. and avers as follows:

(a) The Petition attaches herein the original Complaint (Exhibit 'B') and proposed Answer and New Matter (Exhibit 'C') on behalf of all Defendants to the Complaint pursuant to Pa. R.C.P. 237.3.

(b) Plaintiff's Complaint identifies Barbera's, Inc. as a defendant in the caption, however, nowhere in the body of the Complaint are there any allegations mentioned of Barbera's, Inc. as having performed any conduct which gives rise to the Plaintiff's cause of action.

(c) Specifically, the Plaintiff avers that all Defendants are the owners of real estate located at 244 Maple Avenue. However, to the contrary, Defendants Philip Barbera, Jr. and Barbera's, Inc. are not the record title holders as evidenced by the Deed recorded in Deed Book Volume 2657, Page 152-153, wherein it is stated that Philip Barbera and Marilyn Barbera are the owners of said property. (Said Deed is attached hereto as Exhibit 'D'.)

(d) Petitioners Philip Barbera, Jr. and Barbera's, Inc. aver that their just and meritorious defense to the allegations of ownership is that the Deed to the property in question is clearly identified as being owned by parties other than Barbera's, Inc. and Philip Barbera, Jr.

(e) The original Complaint filed by Plaintiff fails to conform to Pa. R.C.P. 1024 in that Plaintiff's verification is not attached.

(f) Furthermore, the Complaint as set forth avers collectively that all Defendants violated breach of contract in violation of the Real Estate Disclosure Law

and Unfair Consumer Protection Law without specifically identifying any separate conduct of each of the named Defendants.

(g) The Petitioners aver that the failure to specify the separate conduct of each Defendant is violative of the Pennsylvania Rules of Civil Procedure which requires all pleadings to specifically allege conduct of each Defendant for which they are being sued. *See* Pa. R.C.P. 1019(a).

(h) Defendant Philip Barbera filed an answer within the applicable time limit and, therefore, said judgment as to him should be stricken.

(i) The judgment entered in the amount of \$9,000.00 is contrary to Pa. R.C.P. 1021 in that the Complaint requests unliquidated damages and that cannot be assessed unilaterally by Plaintiff without a hearing regarding same.

WHEREFORE, Petitioners respectfully request this Court to grant them leave to file the answers attached hereto.

Respectfully submitted,

STOFKO LAW OFFICES

  
Dennis J. Stofko, Esquire  
I.D. 27638

969 Eisenhower Boulevard, Ste. E  
Johnstown, PA 15904  
(814) 262-0064  
(814) 262-0905 (facsimile)  
- Counsel for Defendants -

Dated: June 8, 2017

**VERIFICATION**

I, Philip Barbera, do hereby state that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 06/07/17


  
Philip Barbera

**VERIFICATION**

I, Marilyn Barbera, do hereby state that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 06/07/17

  
Marilyn Barbera

**VERIFICATION**

I, Philip Barbera, Jr., do hereby state that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 06/07/17

  
Philip Barbera, Jr.




**VERIFICATION**

I, Philip Barbera, as a representative of Barbera's, Inc., do hereby state that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 06/07/17

  
Philip Barbera  
on behalf of Barbera's, Inc.

**EXHIBIT - A -**

2017-01035 HEIDI C LANZENDORFER (vs) PHILIP BARBERA ET AL

Reference No.:  
Case Type: REAL PROPERTY - OTHER  
Judgment: 9,000.00  
Judge Assigned:  
Disposed Desc:  
----- Case Comments -----

Filed: 3/20/2017  
Time: 2:45  
Execution Date: 0/00/0000  
Jury Trial:  
Disposed Date: 0/00/0000  
Higher Crt 1:  
Higher Crt 2:

\*\*\*\*\*

General Index

Attorney Info

LANZENDORFER HEIDI C  
547 MAPLE AVENUE  
JOHNSTOWN PA 15901

PLAINTIFF

CARNEVALI RONALD P ESQ

BARBERA PHILIP  
135 BELMONT ST  
JOHNSTOWN PA 15904

DEFENDANT

BARBERA MARILYN  
135 BELMONT ST  
JOHNSTOWN PA 15904

DEFENDANT

BARBERA PHILIP JR  
135 BELMONT ST  
JOHNSTOWN PA 15904

DEFENDANT

BARBERA'S INC  
135 BELMONT ST  
JOHNSTOWN PA 15904

DEFENDANT

\*\*\*\*\*

Judgment Index

	Amount	Date	Desc
BARBERA'S INC	9,000.00	5/19/2017	DEFAULT JUDGMENT
BARBERA MARILYN	9,000.00	5/19/2017	DEFAULT JUDGMENT
BARBERA PHILIP	9,000.00	5/19/2017	DEFAULT JUDGMENT

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\* Date Entries \*

3/20/2017 FIRST ENTRY - - - - -  
NOTICE OF APPEAL FROM MAGISTERIAL DISTRICT JUDGE JUDGMENT AND  
PRAECIPE TO ENTER RULE TO FILE COMPLAINT, FILED.  
(RULE ISSUED TO DEFENDANT)

3/20/2017 PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT,  
FILED. (3/21/2017)

4/10/2017 COMPLAINT IN CIVIL ACTION AND NOTICE FILED BY RONALD P. CARNEVALI,  
ESQ. (AMOUNT OF DAMAGES CLAIMED: SEE PAPER)

4/21/2017 ANSWER FILED BY DEFENDANT PHILIP BARBERA.

5/19/2017 PRAECIPE FOR DEFAULT JUDGMENT FILED BY RONALD P CARNEVALI JR ESQ  
JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST THE DEFENDANT IN  
BARBERA'S INC ONLY IN DEFAULT OF AN ANSWER, IN THE AMOUNT OF:  
\$9,000.00 ETC (SEE PAPER)  
JUDGMENT ENTERED AND INDEXED. /S/ DEBBIE MARTELLA, PROTHONOTARY.  
PROTHONOTARY'S NOTICE OF ENTRY OF JUDGMENT ISSUED TO THE DEFENDANT.  
IMPORTANT NOTICE DATED MAY 5, 2017 FILED

5/19/2017 PRAECIPE FOR DEFAULT JUDGMENT FILED BY RONALD P CARNEVALI JR ESQ  
JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST THE DEFENDANT  
MARILYN BARBERA ONLY IN DEFAULT OF AN ANSWER, IN THE AMOUNT OF:  
\$9,000.00 ETC (SEE PAPER)  
JUDGMENT ENTERED AND INDEXED. /S/ DEBBIE MARTELLA, PROTHONOTARY.  
PROTHONOTARY'S NOTICE OF ENTRY OF JUDGMENT ISSUED TO THE DEFENDANT.  
IMPORTANT NOTICE DATED MAY 5, 2017 FILED.

5/19/2017 PRAECIPE FOR DEFAULT JUDGMENT FILED BY RONALD P CARNEVALI JR ESQ  
JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST THE DEFENDANT IN  
PHILIP BARBERA ONLY IN DEFAULT OF AN ANSWER, IN THE AMOUNT OF:



2017-01035 HEIDI C LANZENDORFER (vs) PHILIP BARBERA ET AL

Reference No.:		Filed.....:	3/20/2017
Case Type.....:	REAL PROPERTY - OTHER	Time.....:	2:45
Judgment.....:	9,000.00	Execution Date	0/00/0000
Judge Assigned:		Jury Trial....	
Disposed Desc.:		Disposed Date:	0/00/0000
----- Case Comments -----		Higher Crt 1.:	
		Higher Crt 2.:	

\$9,000.00 (SEE PAPER)  
JUDGMENT ENTERED AND INDEXED. /S/ DEBBIE MARTELLA, PROTHONOTARY.  
PROTHONOTARY'S NOTICE OF ENTRY OF JUDGMENT ISSUED TO THE DEFENDANT.  
IMPORTANT NOTICE DATED MAY 5, 2017 FILED.

5/22/2017 MOTION TO STRIKE JUDGMENT FILED BY PHILIP BARBERA JR.

5/25/2017 ORDER TO SET HEARING DATED MAY 24, 2017 FILED, HEARING SET FOR THE  
12TH DAY OF JUNE, 2017 AT 10:00 A.M., BEFORE JUDGE LINDA ROVDER  
FLEMING, ETC., SEE PAPER. BY THE COURT: /S/ FLEMING, J.  
(NOTICE AND COPY ISSUED TO RONALD P. CARNEVALI, ESQ. & DEFENDANTS)

5/30/2017 ORDER DATED MAY 26, 2017, FILED.  
THIS MATTER IS SCHEDULED FOR AN INITIAL PRE-TRIAL CONFERENCE/CALL  
OF THE LIST ON MONDAY, JUNE 19, 2017, BEFORE THE HONORABLE TAMARA  
R BERNSTEIN, AT 10:00 AM IN COURTROOM NO. #2. ETC (SEE PAPER)  
BY THE COURT: /S/ TAMARA BERNSTEIN, JUDGE.  
NOTICE AND COPY ISSUED TO RONALD CARNEVALI ESQ AND THE DEFENDANTS.

6/01/2017 ORDER DATED MAY 31, 2017, FILED.  
THE HEARING ORIGINALLY SCHEDULED FOR JUNE 13, 2017 IS CONTINUED TO  
MONDAY, JUNE 19, 2017, AT 10:00 AM AND SHALL BE HELD IN CONJUNCTION  
WITH THE CIVIL PRE-TRIAL. ETC (SEE PAPER)  
BY THE COURT: /S/ LINDA FLEMING, JUDGE.  
NOTICE AND COPY ISSUED TO RONALD CARNEVALI ESQ AND DEFENDANTS.

----- LAST ENTRY -----

\*\*\*\*\*  
\* Escrow Information \*  
\* Fees & Debits Beg Bal Pymts/Adj End Bal \*

TAX ON APPEAL	.25	.25	.00
JCS/ATJ FEE *	35.50	35.50	.00
AUTOMATION FEE	5.00	5.00	.00
JDMT/DEFLT WRIT	.50	.50	.00
TAX ON PETITION	.50	.50	.00
JCS/ATJ FEE *	35.50	35.50	.00
AUTOMATION FEE	5.00	5.00	.00
APPEAL	57.50	57.50	.00
JDMT/DEFAULT	15.75	15.75	.00
PETITION	57.50	57.50	.00
OVERPYMNT/RFND	32.50	32.50	.00
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	245.50	245.50	.00

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\* End of Case Information \*  
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**EXHIBIT - B -**

HEIDI C. LANZENDORFER,

Plaintiff,

v.

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife, PHILIP  
BARBERA, JR., and BARBERA'S, INC.

Defendants.

: IN THE COURT OF COMMON PLEAS OF  
: CAMBRIA COUNTY, PENNSYLVANIA  
: CIVIL ACTION-LAW

: No. 2017-1035

**COMPLAINT IN CIVIL ACTION**

: Filed on behalf of Plaintiff.

: COUNSEL OF RECORD FOR PARTY:

: RONALD P. CARNEVALI, JR., ESQUIRE  
: I.D. NO. 47733  
: TOBY D. MCILWAIN, ESQUIRE  
: I.D. NO. 316074  
: SPENCE, CUSTER, SAYLOR, WOLFE &  
: ROSE, LLC  
: 1067 MENOHER BOULEVARD  
: JOHNSTOWN, PENNSYLVANIA 15905  
: (814) 536-0735

: **JURY TRIAL DEMANDED**

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that IF YOU FAIL TO DO SO, the case may proceed without you and a JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT without further notice for any money claimed in the Complaint OR FOR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**LAUREL LEGAL SERVICES, INC.**  
**225-227 Franklin Street**  
**Suite 400 Franklin Center**  
**Johnstown, Pennsylvania 15901-2524**  
**(814) 536-8917**

HEIDI C. LANZENDORFER,	:	IN THE COURT OF COMMON PLEAS OF
	:	CAMBRIA COUNTY, PENNSYLVANIA
Plaintiff,	:	CIVIL ACTION-LAW
	:	
v.	:	No. 2017-1035
	:	
PHILIP BARBERA and MARILYN	:	
BARBERA, Husband and Wife, PHILIP	:	
BARBERA, JR., and BARBERA'S, INC.	:	
	:	
Defendants.	:	
	:	<b>JURY TRIAL DEMANDED</b>

**COMPLAINT IN CIVIL ACTION**

~~NOW COMES~~, the Plaintiff, Heidi C. Lanzendorfer, by and through her attorneys,  
Spence, Custer, Saylor, Wolfe & Rose, LLC, and files this Complaint in Civil Action:

**PARTIES**

1. The Plaintiff, Heidi C. Lanzendorfer (hereinafter, "Plaintiff"), is an adult individual who resides at 547 Maple Avenue, Johnstown, Cambria County, Pennsylvania 15901.

2. The Defendants, Philip Barbera and Marilyn Barbera, Husband and Wife are adult individuals who reside at 135 Belmont Street, Johnstown, Cambria County, Pennsylvania 15904.

3. The Defendant, Philip Barbera, Jr., is an adult individual who resides at 135 Belmont Street, Johnstown, Cambria County, Pennsylvania 15904.

4. The Defendant, Barbera's, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a registered business address of 135 Belmont Street, Johnstown, Cambria County, Pennsylvania 15904.

### **JURISDICTION AND VENUE**

5. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of the Court of Common Pleas of Cambria County, Pennsylvania.

6. The events giving rise to this action took place within Cambria County, Pennsylvania, such that personal jurisdiction and venue are proper in the Court of Common Pleas of Cambria County, Pennsylvania.

### **FACTUAL BACKGROUND**

7. Defendants are the owners of the residential real property located at 244 Maple Avenue, Johnstown, Cambria County, Pennsylvania 15901 ("Property").

8. Around or about the summer/fall of 2016, Defendants agreed to sell the Property to Plaintiff.

9. Defendants further agreed to finance the sale of the Property to Plaintiff.

10. Defendants promised and agreed to deliver the Property in good and habitable condition.

11. Based upon Defendants' representations about the Property, Plaintiff placed a Two Thousand Dollar (\$2,000.00) down payment on the Property.

12. Upon taking possession of the Property, it was readily apparent that Defendants' representations were false and misleading.

13. The Property was full of garbage, furniture, mold and insects.

14. Despite their false and misleading representations, Defendants refused to return the Two Thousand Dollar (\$2,000.00) down payment.



**COUNT I**

**Breach of Contract**

15. Plaintiff hereby incorporates by reference Paragraphs 1 through 14 as if the same were fully set forth herein.

16. At all times relevant hereto, Plaintiff and Defendants entered into a contractual relationship whereby Plaintiff would purchase the Property and Defendants would finance the purchase of the Property.

17. As an essential term of that contract, Defendants promised to deliver the Property in good and habitable condition and promised to deliver the Property with new wiring, plumbing, paint and plaster.

18. Upon taking control of the Property, Plaintiff discovered that the Property was not in good and habitable condition and did not have new wiring, plumbing, paint and plaster.

19. Despite their material breaches of the contract, Defendants refuse to return Plaintiff's down payment in the amount of Two Thousand Dollar (\$2,000.00). (A true and correct copy of the receipt for the down payment is attached as Exhibit "A").

WHEREFORE, Plaintiff demands judgment and damages in her favor in an amount in excess of the limits of compulsory arbitration, including costs and attorney's fees, and such other relief as this Court deems necessary, proper, and just. **JURY TRIAL DEMANDED.**

## COUNT II

### Violations of Real Estate Seller Disclosure Law

20. Plaintiff hereby incorporates by reference Paragraphs 1 through 19 as if the same were fully set forth herein.

21. In Pennsylvania, any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects of the property known to the seller.

22. Pursuant to the Real Estate Disclosure Law, 68 Pa.C.S.A. § 7301, *et seq.*, a seller is under an affirmative duty to (1) not make any representations that the seller or the seller's agent knows, or has reason to know, are false, deceptive or misleading, and (2) they shall not fail to disclose known material defects.

23. Defendants violated the Real Estate Disclosure Law by, among other things:

- a. Promising, representing and/or assuring to deliver the Property in good and habitable condition;
- b. Promising, representing and/or assuring to deliver the Property free of insects, mold and other hazardous substances;
- c. Promising, representing and/or assuring to deliver the Property free of garbage, furniture, clothes, and other tangible items; and
- d. Promising, representing and/or assuring that the Property had new wiring, plumbing, paint, and plaster.

24. Despite Defendants' promises, representations, and/or assurances, as set forth more fully above, Defendants failed to deliver the Property in good and habitable condition, failed to deliver the Property free of hazardous conditions such as insects and mold, failed to deliver the Property free of garbage, furniture, and clothing, and failed to deliver the Property with new wiring, plumbing, paint and plaster.

25. Defendants' false, deceptive and misleading misrepresentations are in direct violation of the Real Estate Disclosure Law.

26. As a direct and proximate result of Defendants' promises, representations and/or assurances, Plaintiff has suffered the damages as set forth herein.

WHEREFORE, Plaintiff demands judgment and damages in her favor in an amount in excess of the limits of compulsory arbitration, including costs and attorney's fees, punitive damages, and such other relief as this Court deems necessary, proper, and just. **JURY TRIAL DEMANDED.**

### **COUNT III**

#### **Violations of the Unfair Trade Practices and Consumer Protection Law**

27. Plaintiff hereby incorporates by reference Paragraphs 1 through 26 as if the same were fully set forth herein.

28. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTCPL"), 73 Pa.C.S.A. § 201-1, *et seq.*, declares that it is unlawful for any person to use unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

29. The sale of residential real property is within the scope of UTCPL.

30. The UTCPL provides for a private cause of action against any person who engages in "unfair or deceptive acts or practices."

31. "Unfair or deceptive acts or practices" is defined by the UTCPL as, among other things:

- a. Representing that goods or services have characteristics that they do not have;
- b. Representing that goods or services are of a particular standard, quality or grade, if they are of another; and

- c. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

32. Defendants engaged in unfair and/or deceptive acts or practices by, among other things:

- a. Promising, representing and/or assuring to deliver the Property in good and habitable condition;
- b. Promising, representing and/or assuring to deliver the Property free of insects, mold and other hazardous substances;
- c. Promising, representing and/or assuring to deliver the Property free of garbage, furniture, clothes, and other tangible items; and
- d. Promising, representing and/or assuring that the Property had new wiring, plumbing, paint, and plaster.

33. Despite Defendants' promises, representations and/or assurances, Defendants failed to deliver the Property in good and habitable condition, failed to deliver the Property free of hazardous conditions such as insects and mold, failed to deliver the Property free of garbage, furniture, and clothing, and failed to deliver the Property with new wiring, plumbing, paint and plaster.

34. As a direct and proximate result of Defendants' promises, representations and/or assurances, Plaintiff has suffered the damages as set forth herein.

35. As a result of Defendants' promises, representations and/or assurances, Plaintiff is entitled to recover three (3) times her actual damages in this matter, pursuant to the UTPCPL.

WHEREFORE, Plaintiff demands judgment and damages in her favor in an amount in excess of the limits of compulsory arbitration, including costs and attorney's fees, treble damages pursuant to 73 P.S. § 201-9.2(a), punitive damages, and such other relief as this Court deems necessary, proper, and just. **JURY TRIAL DEMANDED.**

Respectfully submitted,

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC



---

Ronald P. Carnevali, Jr., Esquire

I.D. No. 47733

Toby D. McIlwain, Esquire

I.D. No. 316074

1067 Menoher Boulevard  
Johnstown, Pennsylvania 15905  
(814) 536-0735 (telephone)  
(814) 539-1423 (facsimile)

**VERIFICATION**

I, the undersigned, verify that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Section 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
RONALD P. CARNEVALI, JR.

# EXHIBIT "A"

RECEIVED

AUGUST

# 2016

1500<sup>00</sup> CASH

AND 500<sup>00</sup> CHECK

# 3163 FOR DEPOSIT

ON 244 MAPLE AVE

*Handwritten signature*



CERTIFICATE OF SERVICE

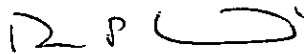
I, the undersigned, hereby certify that on the 7th day of April, 2017, a true and correct copy of the foregoing Complaint in Civil Action was forwarded via first-class mail, postage pre-paid, to the following persons:

Philip Barbera and Marilyn Barbera  
135 Belmont Street  
Johnstown, Pennsylvania 15904  
*Defendants*

Philip Barbera, Jr.  
135 Belmont Street  
Johnstown, Pennsylvania 15904  
*Defendant*

Barbera, Inc.  
135 Belmont Street  
Johnstown, Pennsylvania 15904  
*Defendant*

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC



---

Ronald P. Carnevali, Jr., Esquire  
I.D. No. 47733  
Toby D. McIlwain, Esquire  
I.D. No. 316074

1067 Menoher Boulevard  
Johnstown, Pennsylvania 15905  
(814) 536-0735 (telephone)  
(814) 539-1423 (facsimile)  
*Attorneys for Plaintiff,*  
*Heidi C. Lanzendorfer*

**EXHIBIT - C -**

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HEIDI C. LANZENDORFER,

Plaintiff,

vs.

NO. 2017 – 1035

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife,  
PHILIP BARBERA, JR., and  
BARBERA'S, INC.

Defendants.

**DEFENDANTS' ANSWER AND NEW  
MATTER TO PLAINTIFF'S COMPLAINT**

*Counsel of Record for Party Filing:*

Dennis J. Stofko, Esquire  
I.D. 27638  
STOFKO LAW OFFICES  
969 Eisenhower Boulevard, Suite E  
Johnstown, PA 15904  
(814) 262-0064  
(814) 262-0905 (facsimile)

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HEIDI C. LANZENDORFER,

Plaintiff,

vs.

NO. 2017 – 1035

PHILIP BARBERA and MARILYN  
BARBERA, Husband and Wife,  
PHILIP BARBERA, JR., and  
BARBERA'S, INC.

Defendants.

**DEFENDANTS' ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT**

AND NOW, come the Defendants Philip Barbera and Marilyn Barbera,  
husband and wife, Philip Barbera, Jr., and Barbera's, Inc., by and through counsel  
Dennis J. Stofko, Esquire and file this Answer and New Matter to Plaintiff's  
Complaint and aver as follows:

**PARTIES**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**JURISDICTION AND VENUE**

5. Paragraph 5 of Plaintiff's Complaint is hereby denied as it states a  
conclusion of law to which no responsive pleading is deemed necessary.

6. Paragraph 6 of Plaintiff's Complaint is hereby denied as it states a  
conclusion of law to which no responsive pleading is deemed necessary.

### **FACTUAL BACKGROUND**

7. Denied. It is specifically denied that Defendants collectively are the owners of residential real estate located at 244 Maple Avenue, Johnstown, Pennsylvania 15901. To the contrary, by copy of the Deed attached hereto as Exhibit 'A', the said owners of the property are identified as Philip Barbera and Marilyn Barbera only.

8. Denied. Plaintiff has failed to specifically identify which Defendant alleges to have made an agreement to sell the property to Plaintiff and, therefore, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

9. Denied. Plaintiff has failed to specifically identify which Defendant alleges to have made an agreement to sell the property to Plaintiff and, therefore, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

10. Denied. Plaintiff has failed to specifically identify which Defendant alleges to have made an agreement to sell the property to Plaintiff and, therefore, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

11. Denied. Plaintiff has failed to specifically identify which Defendant alleges to have made an agreement to sell the property to Plaintiff and, therefore, after reasonable investigation, Defendants are without sufficient knowledge or

information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

12. Denied. Plaintiff has failed to specifically identify which Defendant alleges to have made an agreement to sell the property to Plaintiff and, therefore, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

13. Denied. After reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

14. Denied. After reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

## **COUNT I**

### **Breach of Contract**

15. Denied. See previous answers.

16. Plaintiff alleges a contractual relationship, however, Plaintiff fails to attach any written document with regards to same. To the extent that said contract is for the sale of real estate, Defendants aver that any evidence of same is violative of the Statute of Frauds and the Parol Evidence Rule and raise the same as a defense contained in the New Matter set forth herein.

17. Plaintiff alleges a contractual relationship, however, Plaintiff fails to attach any written document with regards to same. To the extent that said contract is for the sale of real estate, Defendants aver that any evidence of same is violative of

Statute of Frauds and the Parol Evidence Rule and raise the same as a defense contained in the New Matter set forth herein.

18. Denied. After reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and proof thereof is required at the time of trial.

19. Paragraph 19 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

## **COUNT II**

### **Violations of Real Estate Seller Disclosure Law**

20. Denied. See previous answers.

21. Paragraph 21 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

22. Paragraph 22 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

23. Paragraph 23 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

24. Paragraph 24 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

25. Paragraph 25 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

26. Paragraph 26 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

### **COUNT III**

#### **Violations of the Unfair Trade Practices and Consumer Protection Law**

27. Denied. See previous answers.

28. Paragraph 28 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

29. Paragraph 29 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

30. Paragraph 30 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

31. Paragraph 31 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

32. Paragraph 32 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

33. Paragraph 33 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

34. Paragraph 34 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

35. Paragraph 35 of Plaintiff's Complaint is hereby denied as it states a conclusion of law to which no responsive pleading is deemed necessary.

#### **NEW MATTER**

36. Each of the Defendants herein raise the Statute of Frauds and the Parol Evidence Rule as a complete and affirmative bar to Plaintiff's claim to the extent that the Plaintiff's Complaint alleges a breach of contract for the purchase of real estate.



37. At all times material herein, Plaintiff agreed to purchase aforesaid property by depositing a non-refundable \$2,000.00 and make monthly payments thereafter.

38. Defendants aver that Plaintiff was aware and specifically agreed to the non-refundable \$2,000.00 deposit.

39. Prior to occupying said premises, Plaintiff extensively inspected and examined the property and found it to be in good, habitable condition.

40. Thereafter, Plaintiff occupied said premises for approximately three (3) weeks. Plaintiff's only complaint during this time was the existence of insects which Defendant agreed to remediate by hiring a professional exterminator.

41. Plaintiff, without just cause, unilaterally terminated her occupancy, thereby breaching the terms and conditions of the parties' agreement.

WHEREFORE, Defendants respectfully request your Honorable Court to dismiss Plaintiff's Complaint.

Respectfully submitted,

STOFKO LAW OFFICES

Dated:

---

Dennis J. Stofko, Esquire  
I.D. 27638  
969 Eisenhower Boulevard, Ste. E  
Johnstown, PA 15904  
(814) 262-0064  
(814) 262-0905 (facsimile)  
- Counsel for Defendants -

**CERTIFICATE OF SERVICE**

I, the undersigned counsel, hereby certify that a true and correct copy of the foregoing document has been served via United States mail, postage prepaid, on the 8<sup>th</sup> day of June, 2017, upon the following:

Ronald P. Carnevali, Jr., Esquire  
Spence Custer Saylor Wolfe & Rose, LLC  
1067 Menoher Boulevard  
Johnstown, PA 15905  
- Counsel for Plaintiff -

---

Dennis J. Stofko, Esquire  
- Counsel for Defendants -

**EXHIBIT - A -**

Tax Claim

# **JUDICIAL SALE THIS DEED**

CERTIFIED

Doc ID: 005735980002 Type: GEN  
Recorded: 08/30/2014 at 10:00:22 AM  
Fee Amt: \$390.81 Page 1 of 2  
Cambria County, PA  
ANDREA FEDORE SIMS Recorder of Deeds  
File# 2014-00010745

BK 2657 PG 152-153

MADE the 21st day of August in the year of our Lord, 2014, BETWEEN THE TAX CLAIM BUREAU OF CAMBRIA COUNTY, PENNSYLVANIA, Trustee, under the provisions of the Act of July 7, 1947, P.L. 1368, amendments thereto, hereinafter called the GRANTOR, AND

Philip & Marilyn Barbera  
135 Belmont St.  
Johnstown, PA 15904

hereinafter called the GRANTEE.

WHEREAS, the hereinafter described premises were assessed in the name of Rickie W. Jr. & Angela K. Reffner and taxes levied which have not been paid and which are delinquent; and

WHEREAS, the said delinquent taxes against the said property were filed in the office of the Tax Claim Bureau of Cambria County, Pennsylvania; and

WHEREAS, after proceeding under the provisions of the Act aforesaid, the Tax Claim Bureau did expose the said premises to public sale on September 10, 2012; and

WHEREAS, the said premises were sold at said public sale to No One for the sum of -----(-) Dollars, as is more particularly shown in the report and return of said sale by the Tax Claim Bureau at the subsequent confirmation thereof by the Court of Common Pleas of Cambria County, Pennsylvania, at No. 2012-3082

NOW THIS INDENTURE WITNESSETH, That for and in consideration of the sum of Two thousand five hundred and 00/100-----(\$2,500.00) Dollars, the receipt whereof is hereby acknowledged, Grantor does hereby grant and convey unto the said Grantee, heirs, successors or assigns, the following described property, to-wit:

That certain piece, parcel or tract of land located in the 11<sup>th</sup> Ward of the City of Johnstown, County of Cambria and State of Pennsylvania, bounded and described as follows:

CONTROL NUMBER: 81-5348

MAP NUMBER: 81-016. -102.000

DESCRIPTION: Irreg. H G

ASSESSMENT NUMBER: 810416

DEED RECITAL: 2143-1054

Stamp #2014-061694	Consideration	\$2,500.00
Loc Johnstown City	Adm N	
Commonwealth of Pennsylvania		\$161.28
Johnstown City		\$80.64
Greater Johnstown School District		\$80.64
Total:		\$322.56

Being the same parcel included in the petition for Judicial Sale filed in the court of Common Pleas, Cambria County, Pennsylvania, Civil Action No. 2014-1843 and sold August 21, 2014, pursuant to an Order of Court dated June 25, 2014.

Being the same property offered for sale for delinquent taxes in accordance with the provisions of the Act of Assembly hereinbefore recited under Tax Claim No. 81-5348 as the property of Rickie W. Jr & Angela K. Reffner.

This deed is executed and acknowledged by JoAnne Ranck, who was duly appointed Director of the Tax Claim Bureau by Resolution of the County Commissioners of Cambria County, Pennsylvania, dated December 6, 2010.

IN WITNESS WHEREOF, the grantor has caused this deed to be executed in its name and its official seal to be affixed hereto the day and year first above written.

TAX CLAIM BUREAU OF CAMBRIA COUNTY, PA

By JoAnne Ranck (Seal)  
Director

Witness:  
Dennis Robbins

COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF CAMBRIA

ss

On this, the 30<sup>th</sup> day of SEPTEMBER, 2014 before me, the Prothonotary of the County of Cambria, the undersigned officer, personally appeared JoAnne Ranck, Director of the Tax Claim Bureau of the County of Cambria, Commonwealth of Pennsylvania, who in due form of law acknowledged the foregoing Indenture to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and official seal the day and year aforesaid.

Dennis Martella (Seal)  
Prothonotary

My commission expires the first Monday of January, 2016.

I CERTIFY that the precise residence address of the grantee in this indenture is:

135 Belmont St.  
Johnstown, PA 15904



I hereby certify that this document is recorded in the Recorder of Deeds Office of CAMBRIA COUNTY, PENNSYLVANIA

Andrea Pedersen  
Recorder of Deeds

JoAnne Ranck  
JoAnne Ranck, Director  
Tax Claim Bureau

**EXHIBIT - D -**

Tax Claim

# JUDICIAL SALE THIS DEED

CERTIFIED

Doc ID: C05735980002 Type: GEN  
Recorded: 08/30/2014 at 10:00:22 AM  
Fee Amt: \$390.81 Page 1 of 2  
Cambria County, PA  
ANDREA FEDORE SIMS Recorder of Deeds  
File# 2014-00010745

Bk 2657 Pg 152-153

MADE the 21st day of August in the year of our Lord, 2014, BETWEEN THE TAX CLAIM BUREAU OF CAMBRIA COUNTY, PENNSYLVANIA, Trustee, under the provisions of the Act of July 7, 1947, P.L. 1368, amendments thereto, hereinafter called the GRANTOR, AND

Philip & Marilyn Barbera  
135 Belmont St.  
Johnstown, PA 15904

hereinafter called the GRANTEE.

WHEREAS, the hereinafter described premises were assessed in the name of Rickie W. Jr. & Angela K. Reffner and taxes levied which have not been paid and which are delinquent; and

WHEREAS, the said delinquent taxes against the said property were filed in the office of the Tax Claim Bureau of Cambria County, Pennsylvania; and

WHEREAS, after proceeding under the provisions of the Act aforesaid, the Tax Claim Bureau did expose the said premises to public sale on September 10, 2012; and

WHEREAS, the said premises were sold at said public sale to No One for the sum of -----(-) Dollars, as is more particularly shown in the report and return of said sale by the Tax Claim Bureau at the subsequent confirmation thereof by the Court of Common Pleas of Cambria County, Pennsylvania, at No. 2012-3082

NOW THIS INDENTURE WITNESSETH, That for and in consideration of the sum of Two thousand five hundred and 00/100-----(\$2,500.00) Dollars, the receipt whereof is hereby acknowledged, Grantor does hereby grant and convey unto the said Grantee, heirs, successors or assigns, the following described property, to-wit:

That certain piece, parcel or tract of land located in the 11<sup>th</sup> Ward of the City of Johnstown, County of Cambria and State of Pennsylvania, bounded and described as follows:

CONTROL NUMBER: 81-5348

MAP NUMBER: 81-016. -102.000

DESCRIPTION: Irreg. H G

ASSESSMENT NUMBER: 810416

DEED RECITAL: 2143-1054

Stamp #2014-061694	Consideration	\$2,500.00
Lee Johnstown City	Adt. N	
Commonwealth of Pennsylvania	\$161.28	
Johnstown City	\$80.64	
Greater Johnstown School District	\$80.64	
Total:	\$322.56	

Being the same parcel included in the petition for Judicial Sale filed in the court of Common Pleas, Cambria County, Pennsylvania, Civil Action No. 2014-1843 and sold August 21, 2014, pursuant to an Order of Court dated June 25, 2014.

Being the same property offered for sale for delinquent taxes in accordance with the provisions of the Act of Assembly hereinbefore recited under Tax Claim No. 81-5348 as the property of Rickie W. Jr & Angela K. Reffner.

This deed is executed and acknowledged by JoAnne Ranck, who was duly appointed Director of the Tax Claim Bureau by Resolution of the County Commissioners of Cambria County, Pennsylvania, dated December 6, 2010.

IN WITNESS WHEREOF, the grantor has caused this deed to be executed in its name and its official seal to be affixed hereto the day and year first above written.

TAX CLAIM BUREAU OF CAMBRIA COUNTY, PA

By JoAnne Ranck (Seal)  
Director

Witness:  
Denise Robbins

COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF CAMBRIA

ss

On this, the 30<sup>th</sup> day of SEPTEMBER, 2014 before me, the Prothonotary of the County of Cambria, the undersigned officer, personally appeared JoAnne Ranck, Director of the Tax Claim Bureau of the County of Cambria, Commonwealth of Pennsylvania, who in due form of law acknowledged the foregoing Indenture to be her act and deed and desired that the same might be recorded as such.

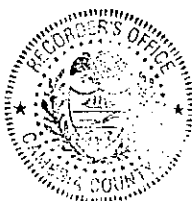
WITNESS my hand and official seal the day and year aforesaid.

Debby Martella (Seal)  
Prothonotary

My commission expires the first Monday of January, 2016.

I CERTIFY that the precise residence address of the grantee in this indenture is:

135 Belmont St.  
Johnstown, PA 15904



I hereby certify that this document is recorded in the Recorder of Deeds Office of CAMBRIA COUNTY, PENNSYLVANIA.

Andrea Bidone-Sima  
Recorder of Deeds

JoAnne Ranck  
JoAnne Ranck, Director  
Tax Claim Bureau

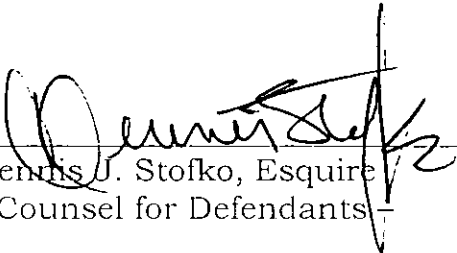




**CERTIFICATE OF SERVICE**

I, the undersigned counsel, hereby certify that a true and correct copy of the foregoing document has been served via United States mail, postage prepaid, on the 8<sup>th</sup> day of June, 2017, upon the following:

Ronald P. Carnevali, Jr., Esquire  
Spence Custer Saylor Wolfe & Rose, LLC  
1067 Menoher Boulevard  
Johnstown, PA 15905  
- Counsel for Plaintiff -

  
Dennis J. Stofko, Esquire  
- Counsel for Defendants -

**STOFKO LAW OFFICES**

**PLEASE NOTE NEW ADDRESS**

DENNIS J. STOFKO

969 EISENHOWER BOULEVARD, SUITE E  
JOHNSTOWN, PENNSYLVANIA 15904

DEVON A. MALLOY, *ASSOCIATE*

TELEPHONE 814-262-0064  
FAX 814-262-0905  
E-MAIL [stofkoesq@stofkolaw.com](mailto:stofkoesq@stofkolaw.com)  
E-MAIL [dmalloyesq@stofkolaw.com](mailto:dmalloyesq@stofkolaw.com)

June 8, 2017

Prothonotary  
Cambria County Courthouse  
200 South Center Street  
Ebensburg, PA 15931

RE: Heidi C. Lanzendorfer v. Philip Barbera, et al.  
No. 2017 - 1035 (Cambria County)

Dear Madam/Sir:

Enclosed for filing is an Amended Petition for Relief of Judgment of Default Pursuant to Pa. R.C.P. 237.3 in connection with the above-captioned matter.

All counsel of record have been served a copy of same.

Thank you for your assistance in this matter.

Sincerely,

  
Dennis J. Stofko

DJS/cwb  
Enclosure

cc: Ronald P. Carnevali, Jr., Esquire  
Mr. Philip Barbera, Jr.